

GREEN CREMATION TEXAS, LLC)	CASE NO.
206 E 9 th ST)	
Austin, Texas 78707)	JUDGE:
)	
Plaintiff,)	
)	
vs.)	
)	
STORAGE IN MOTION, LLC)	
c/o its Statutory Agent)	<u>COMPLAINT FOR MONETARY</u>
David Griffiths)	<u>DAMAGES</u>
1311 Donald Avenue)	
Lakewood, Ohio 44107)	
)	
Defendant.)	

1. Plaintiff Green Cremation Texas, LLC (“Plaintiff”), is a Texas corporation engaged in the business of cremation services.
2. Defendant Storage in Motion, LLC (“Defendant”), is an Ohio corporation, engaged in the business of selling and renting mobile refrigerated trailers known as “Caster Boxes”, whose registered agent for service exists at the above captioned address.

3. This is an action for compensatory damages, loss of use, and treble damages brought by Plaintiffs as a direct and proximate result of breach of contract, breach of warranties, negligence, misrepresentation, and the ultimate delivery of a nonconforming good – e.g., the Caster Box.

4. On March 1, 2022, Plaintiff contacted Defendant so as to inquire about the availability of a “Caster Reefer Box” Refrigerated Cooler Trailer (“Caster Box”) for the storage and/or transportation of cadavers for Plaintiff’s business purposes.

5. On March 2, 2022, Defendant confirmed, in writing, the interior width for the 7' x 12' trailer is 6'8".

6. On April 29, 2022, Defendant confirmed, in writing, the following internal dimensions for the 7' x 12' caster box: 12' long x 6'8" wide x 6'1" tall.

7. On May 4, 2022, Defendant provided a preliminary invoice to Plaintiff for the purchase of a New 2022 7' x 12' Caster Box, from Defendant, for Plaintiff's aforementioned business purposes.

8. Between the period of May 5, 2022, and May 13, 2022, prior to signing the invoice, Plaintiff, on numerous occasions, and through various mediums, provided Defendant with clear information, which expressly made Defendant know, or have reason to know, that Plaintiff's purchase of Caster Box from Defendant was contingent on said Caster Box possessing the above specifically represented internal dimensions for the purpose of having customized shelves – approximately 20' wide each – installed by a third-party to the interior of the 7' x 12' caster box so as to effectively transport cadavers for Plaintiff's business purposes.

9. On May 14, 2022, Plaintiff sent the signed invoice to Defendant for purchase of a New 2022 7' x 12' Caster Box with casters for \$19,400.00. Thereafter, Plaintiff, in reliance upon the provided internal dimensions, purchased the customized shelves from the third-party company.

10. On May 17, 2022, Plaintiff, via electronic transfer, provided Defendant with proper payment for the purchase of a New 2022 Caster Box.

11. On June 2, 2022, pursuant to the terms of the agreement, Defendant delivered Plaintiff's purchased Caster Box to a delivery driver hired by Plaintiff, who subsequently took possession of said Caster Box.

12. On June 4, 2022, Plaintiff received delivery of the Caster Box at issue from the above delivery driver. Immediately, Plaintiff inspected the Caster Box and took note of defects and/or nonconformities. Most significantly, Plaintiff noticed the delivered Caster Box had internal dimensions of 12' x 6'4" x 6'1", which is 4" less, in width measurement, than the represented and agreed upon internal dimensions of 12' x 6'8" x 6'1".

13. Subsequently, on June 4, 2022, after receiving delivery of the nonconforming Caster Box, Plaintiff notified Defendant of said non-conformities, expressly highlighting the significance of the disparity between the represented width

measurement and the provided width measurement respecting the Caster Box, which substantially impairs and/or completely frustrates Plaintiff's ability to use the Caster Box for the purpose it was purchased for.

14. On June 6, 2022, after Plaintiff's June 4, 2022 e-mail to Defendant outlining Plaintiff's concerns with the provided non-conforming Caster Box did not receive a response from Defendant, Plaintiff, once more, e-mailed Defendant to confirm that Defendant had received the June 4, 2022 e-mail respecting Plaintiff's concerns.

15. On June 7, 2022, Defendant responded to Plaintiff's June 4, 2022 and June 6, 2022 e-mails. In said response, Defendant confirmed receipt of Plaintiff's above emails and provided excuses, not remedies, for the delivery of the non-conforming Caster Box at issue.

16. The same day, approximately a few hours later, Plaintiff responded to Defendant's email providing excuses, and expressed Plaintiff's disappointment with Defendant's failure to take responsibility for Plaintiff's concerns respecting the Caster Box at issue and further inquired as to the reason for Defendant's delivery of the non-conforming Caster Box.

17. Once again, Defendant failed to reply to Plaintiff's above June 7, 2022 e-mail in a timely fashion, which resulted in Plaintiff, once again, sending a June 9, 2022 e-mail to inquire when Plaintiff may expect a response.

18. On June 10, 2022, Defendant responded to Plaintiff's June 7, 2022 and June 9, 2022 e-mails. In said response, Defendant offered further excuses for the delivery of the non-conforming Caster Box and declined, in no uncertain terms, any responsibility for said delivery.

19. Finally, on June 13, 2022, Plaintiff e-mailed Defendant in an attempt to seek an amicable resolution to the issue of the provided non-conforming Caster Box one final time. As of this date, Plaintiff has not received a response to this e-mail.

JURISDICTION

20. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 19 as if fully rewritten herein.

21. Upon information and belief, jurisdiction is proper over Defendant because it is headquartered in Summit County, Ohio.

22. Plaintiff is a Texas corporation and transacted business in Ohio, thereby purposefully availing themselves of Ohio law and subjecting themselves to the jurisdiction of Ohio courts.

23. Defendant is headquartered in Summit County, making this Court an appropriate venue for this action.

COUNT I: BREACH OF CONTRACT

24. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 23 as if fully rewritten herein.

25. Defendant and Plaintiff were engaged in a transaction for the sale of goods pursuant to R.C. 1302.01.

26. Defendants entered into a contractual relationship with Plaintiffs to provide the sale of a new 12' long x 6'8" wide x 6'1" tall Caster Box.

27. Pursuant to this contractual relationship, Defendant had a duty and obligation to Plaintiff to deliver conforming goods pursuant to R.C. 1302.14 in accordance with the agreed upon terms, express and implied.

28. Defendant willfully and wantonly breached the contract by failing to exercise ordinary care and provide conforming goods and perform, in good faith, the duties and obligations required by law thereof in delivering caster box with internal dimensions of 12' long x 6'4" wide x 6'1" tall, a width four inches (4") less than agreed upon.

29. Within reasonable time after discovery of the non-conformity, Plaintiff notified Defendant of the breach as required by R.C. 1302.65.

30. As a direct and proximate result of Defendants' breach, Plaintiff suffered over \$25,000.00 in damages.

COUNT II: NEGLIGENCE

31. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 30 as if fully rewritten herein.

32. Defendant had a duty to exercise ordinary and reasonable care in performing the duties and obligations required by law thereof.

33. Defendant breached their duties by failing to exercise reasonable care in supplying agreed upon caster box and/or delivering defective goods and/or delivering nonconforming goods, and/or by communicating false information, causing the purpose of Plaintiff's purchase to fail in toto, resulting in a total loss of use.

34. Defendants' breach of the aforementioned duties was willful and wanton and/or amounted to a reckless indifference Plaintiff.

35. The delivery of the nonconforming caster box to the Plaintiffs occurred under such circumstances that, in the ordinary course of events, the loss would not have occurred had ordinary care been exercised by the Defendants.

36. As a direct and proximate result of the Defendants' breach of duty, Plaintiffs suffered injuries and incurred expenses as a result of the loss of use and other costs associated thereof.

COUNT III: VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT

37. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 36 as if fully rewritten herein.

38. Defendant is a "supplier" as defined in R.C. 1345.01(C).

39. Plaintiff is a "consumer" as defined in R.C. 1345.01(D).

40. Defendant and Plaintiff were involved in a "consumer transaction" as defined in R.C. 1345.01(A).

41. Defendant has engaged in unconscionable, deceptive and/or unfair acts and practices in connection with the consumer transaction pursuant to R.C. 1345.02.

42. Defendant engaged in deceptive acts that were both false and material to the consumer transaction.

43. Defendant's violation of the Ohio Consumer Sales Protection Act was the direct and proximate cause of Plaintiff's injury.

COUNT IV: BREACH OF EXPRESS WARRANTY

44. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 43 as if fully rewritten herein.

45. Defendant is a "seller" for purposes of R.C. 1302.26.

46. Defendant made an affirmation of fact and/or description when providing Plaintiff with internal dimensions of 12' long x 6'8" wide x 6'1" tall for the 7' x 12' caster box, which was therefore made part of the basis of the bargain.

47. Within reasonable time after discovery of the nonconformity, Plaintiff notified Defendant of the breach pursuant to R.C. 1302.65.

48. As a result of the defect, Plaintiff suffered injury.

COUNT V: BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

49. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 48 as if fully rewritten herein.

50. Defendant knew, or had reason to know, at the time of contracting, the particular purpose for which Plaintiff's wanted to purchase the caster box, which differed from the ordinary purpose for which caster boxes are used.

51. Defendant knew, or had reason to know, that the Plaintiff relied upon the Defendant's expertise and judgment in furnishing or selecting an appropriate caster box to satisfy Plaintiff's particular purpose.

52.. Plaintiff, in fact, relied upon Defendant's expertise and judgment to select and furnish a suitable caster box to fit such purpose.

53. Defendant delivered to Plaintiff a caster box not fit the particular purpose, which Defendant knew of, or had reason to know of.

54. Within reasonable time after discovery of the non-conformity, Plaintiff sufficiently notified Defendant of the breach pursuant to R.C. 1302.27.

55. Plaintiff's injury was a direct and proximate result of Defendant's breach.

COUNT VI: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

56. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 55 as if fully rewritten herein.

57. Defendant is a "merchant" with respect to goods of that kind as defined in R.C. 1302.27.

58. Defendant delivered a defectively designed caster box not reasonably fit for its ordinary purpose.

59. The defect existed when Defendant delivered the caster box to Plaintiff.

60. The defect was the direct and proximate cause of Plaintiff's injuries.

**COUNT VII: PRODUCT LIABILITY-FAILURE TO CONFORM TO
REPRESENTATIONS MADE BY SUPPLIER**

61. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 60 as if fully rewritten herein.

62. Defendant is a "supplier" as defined in R.C. 2307.71(15)(a).

63. Defendant represented to Plaintiff ..that the caster box purchased by Plaintiff would have internal dimensions of 12' long x 6'8" wide x 6'1" tall.

64. The caster box delivered to Plaintiff did not contain the represented internal dimensions. Rather, caster box delivered to Plaintiff had internal dimensions of 12' long x 6'4" wide x 6'1" tall.

65. The failure of the caster box to conform to the representations made by Defendant was the direct and proximate cause of Plaintiff's injuries.

COUNT VIII: SUPPLIER NEGLIGENCE

66. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 65 as if fully rewritten herein.

67. Pursuant to this contractual relationship, Defendant had a duty and obligation to Plaintiff to deliver conforming goods in accordance with represented internal dimensions of 12' long x 6'8" wide x 6'1" tall.

68. Defendant delivered a nonconforming caster box to Plaintiff with an internal width four inches (4") less than the represented dimension.

69. Defendant's negligence was the direct and proximate cause of Plaintiff's injuries.

COUNT IX: NEGLIGENT MISREPRESENTATION

70. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 69 as if fully rewritten herein.

71. Defendant communicated false information to Plaintiff regarding the internal dimensions of the caster box.

72. Defendant failed to use reasonable care or competence in obtaining or communication the information to Plaintiff.

73. Plaintiff justifiably relied upon the information provided by Defendant.

74. Plaintiff suffered injuries as a direct and proximate result of such justifiable reliance.

COUNT X: FRAUDULENT MISREPRESENTATION

75. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 74 as if fully rewritten herein.

76. Defendant affirmatively misrepresented the internal dimensions of Plaintiff's caster box to be 12' long x 6'8" wide x 6'1" tall.

77. Defendant had knowledge that the represented internal dimensions were false and material to the transaction.

78. Defendant made the misrepresentation with intent to mislead Plaintiff into relying on it.

79. Plaintiff justifiably relied on Defendant's representation.

80. Plaintiff's reliance on Defendant's representation proximately caused Plaintiff's injury.

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- I. Compensatory damages in excess of twenty-five thousand dollars (\$25,000.00); and
- II. Treble damages for the Defendants' willful and wanton conduct and/or reckless indifference, if allowed by law; and
- III. Reasonable attorney fees, court costs, and pre and/or post judgment interest;
- IV. For any other relief in law or equity that this Honorable Court deems is just and appropriate.